

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

JIMMY LEE MATHIS,

Plaintiff,

v.

DIRECTOR TDCJ-CID,

Defendant.

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CIVIL ACTION NO. 5:20-CV-00085-RWS-JBB

ORDER

Before the Court is the Magistrate Judge's Report and Recommendation that contains proposed findings of fact and recommends the petition for writ of habeas corpus should be denied. Docket No. 33.

Petitioner Jimmy Lee Mathis, a prisoner currently confined at the Terrell Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Docket No. 1. The Court ordered this matter referred to the Magistrate Judge. The Magistrate Judge's Report and Recommendation recommends denying the petition because: (1) the state court's application of *Strickland v. Washington*, 466 U.S. 668 (1984), was not unreasonable; and (2) Petitioner raises a freestanding claim of actual innocence based on his assertion that the jury wrongly decided the case, which is not cognizable under § 2254. Docket No. 33 at 13–14. Petitioner has acknowledged receipt of the Report and Recommendation. Docket Nos. 35, 36.

Petitioner has not objected to the Report and Recommendation. Because Petitioner filed no objections to the Report and Recommendation, Petitioner is barred from *de novo* review by the District Court of those findings, conclusions and recommendations; and, except upon grounds of plain error, they are also barred from appellate review of the unobjected-to factual findings and

legal conclusions accepted and adopted by the District Court. *See Arriaga v. Laxminarayan*, Case No. 4:21-CV-00203-RAS, 2021 WL 3287683, at *1 (E.D. Tex. July 31, 2021).

The Court has reviewed the pleadings and the Report and Recommendation of the Magistrate Judge. Upon such review, the Court has determined the Report and Recommendation of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989) (noting that where no objections to a Magistrate Judge's Report and Recommendation are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law.")

Additionally, Petitioner is not entitled to the issuance of a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253; Fed. R. App. P. 22(b). The standard for granting a certificate of appealability requires a petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the petitioner need not demonstrate he would prevail on the merits. Rather, he must demonstrate (1) that the issues are subject to debate among jurists of reason, (2) that a court could resolve the issues in a different manner or (3) that the questions raised are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483–84; *see also Avila v. Quarterman*, 560 F.3d 299, 304 (5th Cir. 2009). If the motion was denied on procedural grounds, the petitioner must show that jurists of reason would find it debatable (1) whether the petition raises a valid claim of the denial of a constitutional right, and (2) whether the district court was correct in its procedural ruling. *Slack*, 529 U.S. at 484; *Elizalde*, 362 F.3d at 328. Any doubt regarding whether to grant a certificate of appealability

should be resolved in favor of the petitioner. *See Miller v. Johnson*, 200 F.3d 274, 280–81 (5th Cir. 2000).


Here, Petitioner has not shown that any of the issues raised by his petition are subject to debate among jurists of reason, or that a procedural ruling was incorrect. Petitioner has not shown that the questions presented are worthy of encouragement to proceed further. Petitioner has, therefore, failed to make a sufficient showing to merit the issuance of a certificate of appealability. Thus, a certificate of appealability will not be issued. Accordingly, it is

ORDERED that the Report and Recommendation of the Magistrate Judge (Docket No. 33) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the Petition for Writ of Habeas Corpus (Docket No. 1) is **DENIED**. It is further

ORDERED that the above-captioned case is **DISMISSED WITH PREJUDICE**. A final judgment will be entered in this case in accordance with this Order.

So ORDERED and SIGNED this 27th day of March, 2023.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE